IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

MONDAY, THE 9TH APRIL 2007 / 19TH CHAITHRA 1929

CRP.No. 267 of 1994(H)

AA.142/1987 of A.A.(LR),KOZHIKODE
SM.531/1985 of LAND TRIBUNAL, KONDOTTY
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REVN. PETITIONER/APPELLANT/ 'F' FORM PARTY:

K.P. MUHAMMED MAULAVI,
P.O. MUNDAKKAL, ERNAD TALUK,
MALAPPURAM DISTRICT - REP.
BY HIS POWER OF ATTORNEY PARAKUTTIYALI,
S/O ABDURAHIMAN, VILAYIL AMSOM,
MUNDAKKAL DESOM, ERNAD TALUK.

BY ADV. SRI.K.G.PAVITHRAN

RESPONDENTS/RESPONDENTS- CULTIVATORS/
LAND OWNERS AND STATE:
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1. **UNNIARATHODI ALI, S/O ASSAN MOYIN,**
MUNDAKKAL DESOM, VILAYIL AMSOM,
ERNAD TALUK.

2. **UNNIARATHODI KOYALI MUSALIAR,**
S/O ASSAN MOYIN,
MUNDAKKAL DESOM, VILAYIL AMSOM,
ERNAD TALUK. (DIED)

3. **UNNIARATHODI MUHAMMAD,**
S/O ASSAN MOYIN,
MUNDAKKAL DESOM, VILAYIL AMSOM,
ERNAD TALUK.

4. **UNNIARATHODI MOOSAKUTTY,**
S/O ASSAN MOYIN,
MUNDAKKAL DESOM, VILAYIL AMSOM,
ERNAD TALUK.

5. UNNIARATHODI UNNEEMA,
D/O ASSAN MOYIN,
MUNDAKKAL DESOM, VILAYIL AMSOM,
ERNAD TALUK.

6. THALETHODI ILLATH KRISHNAN
NAMBUDIRI, VILAYIL, ERNAD TALUK.

7. THALETHODI ILLATH SANKARAN
NAMBUDIRI, VILAYIL, ERNAD TALUK,
MALAPPURAM DISTRICT.

8. STATE OF KERALA, REPRESENTED BY ITS
CHIEF SECRETARY, GOVERNMENT SECRETARIAT,
TRIVANDRUM.

<u>R9 TO R16 IMPLEADED:</u>

9: MARIYUMMA, W/O KOYALI MUSALIAR,
VILAYIL AMSOM, MUNDAKKAL, ERNAD TALUK.

10: MYMOONATH, D/O KOYALI MUSALIAR,
VILAYIL AMSOM, MUNDAKKAL, ERNAD TALUK.

11: ABDUL MANNAN, S/O KOYALI MUSALIAR,
VILAYIL AMSOM, MUNDAKKAL, ERNAD TALUK.

12: ABDUL SHUKOOR, S/O KOYALI MUSALIAR,
VILAYIL AMSOM, MUNDAKKAL, ERNAD TALUK.

13: RUBEENA, D/O KOYALI MUSALIAR,
VILAYIL AMSOM, MUNDAKKAL, ERNAD TALUK.

14: ABDUL HAKEEM, S/O KOYALI MUSALIAR, (MINOR)
VILAYIL AMSOM, MUNDAKKAL, ERNAD TALUK.

15: ASLAM, (MINOR) S/O KOYALI MUSALIAR, (MINOR)
VILAYIL AMSOM, MUNDAKKAL, ERNAD TALUK.

16: BISHARA, (MINOR) D/O KOYALI MUSALIAR,
VILAYIL AMSOM, MUNDAKKAL, ERNAD TALUK.

2ND RESPONDENT DIED AND ADDITIONAL RESPONDENTS 9 TO 16 ARE IMPLEADED AS THE LRS. OF THE DECEASED 2ND RESPONDENT AS PER ORDER DATED 9.4.07 IN CMP 1438 OF 2001.

BY ADV. SRI.R.RAMADAS

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON 09/04/2007, ALONG WITH CRP NO. 491 OF 1994 CRP NO. 623 OF 1994 AND OTHER CASE, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

ORDER ON C.M.P. 345 OF 1994
IN
C.R.P. NO.267 OF 1994

DISMISSED

9/4/07 **SD/- M.N. KRISHNAN, JUDGE.**

[True Copy]

P.A. TO JUDGE.

M.N. KRISHNAN, J.

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C.R.P. NOs. 267, 491, 623
and 624 OF 1994

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Dated this the 9th day of April, 2007.

O R D E R

These revisions are preferred against the order of the Appellate Authority in A.A.Nos.142/87, 217,87, 219/87 and 218/87 respectively. These appeals were preferred against the orders of the Land Tribunal in S.M.Nos.531/85, 590/85, 592/85 and 594/85 respectively. The Land Tribunal as well as the Appellate Authority held that the respondents in these revision petitions are entitled to fixity of tenure over the extent of 6 acres and 38 cents of property and negatived the relief claimed by the present revision petitioners with respect to tenancy of 1 acre and 48 cents in Sy.No.17. The brief facts necessary for the disposal of the revisions are stated as follows. The respondents contended that the property having an extent of 6.38 acres along with other properties belong to one Naryananan Namboothiri and in the year 1912, there was an assignment deed in favour of Chekkutty and this Chekkutty in turn assigned property in favour of Assan Moyin having an extent of 200 x 200 6 feet koles which work out to 33.3

acres and that after assignment of certain properties respondents in these revisions are holding the property as tenants and therefore entitled to fixity of tenure.

2. On the other hand, the revision petitioners in these cases would contend that the property having an extent of 1 acre and 38 cents was leased in favour of their predecessor by Narayanan Namboodiri and 1 acre and 48 cents in the name of wife and therefore they are in possession of said properties entitled to fixity of tenure. The lease obtained by the mother of 1 acre and 48 cents is covered in S.M.P.592/85 and the alleged lease obtained by the father is included in S.M.590/85 and S.M.594/85. Though S.M.531/85 is initiated for the purpose of assigning 3.48 acres of land in favour of the respondents they entered appearance and contended hat they are entitled to 6.38 acres and the revision petitioners herein contended that this 1 acre 38 cents and 1 acre 48 cents which forms part of that land belong to them as tenants and therefore they are entitled to fixity of tenure. After considering the documentary as well as oral evidence available the Tribunal granted certificate of purchase with respect to 6.38 acres of land comprised in Sy.No.17 of Muthuvallur

village in favour of respondents herein and negatived the contentions of the civil revision petitioners with respect to assignment of land claimed by them. It is aggrieved by that decision the present revision petitions are filed.

3. The learned counsel for the revision petitioners persuasively contended before me that the order of the land Tribunal as well as the Appellate Authority is vitiated for the reason that it had not considered the documentary or oral evidence or the authorised officer's report and that had lead to miscarriage of justice. He would also contend that revenue inspectors report had not been given the evidentiary value which it is entitled to and therefore that has also to be corrected. On the other hand, the learned counsel for the respondents would contend that there are clinching documentary evidence before the Tribunal to establish the tenancy right claimed by them and therefore revision lacks merit.

4. I had perused the order of the Land Tribunal as well as the Appellate Authority. Ext.P2 is the first assignment deed which relates to an extent of 33.33 acres of land. It is a kanam demise of the year 1912 executed in favour of one Chekkutty Haji and

survey number shown is Re.Sy.17. It is this property that had been assigned in favour of the predecessors in interest of the respondents in these revision petitions namely Assan Moyin. The said document is of the year 1954. So, if the property as described under Ext.P2 document in the year 1912 has been given on kanam demise then the question of setting up a tenancy right can be only under either Chekkutty Haji or Assan Moyin and not under the Illam. Strangely, revision petitioners are not able to show the oral entrustment to their predecessors of 1 and 35 cents and 1 acre and 48 cents respectively. The learned counsel for the revision petitioners submits before me that in the year 1954 there is no survey Number mentioned as Sy.No.17 and that will cut at the root of the case of the respondents. On the contra, the learned counsel for the respondents would contend that what is transferred under Ext.P3 is the property covered by Ext.P2 which takes in Sy.No.17. It is the settled position of law when there is a discrepancy regarding survey number the boundaries will have to prevail and the extent also has also to be taken into consideration. So, what is conveyed under Ext.P3 is the property obtained under Ext.P2 and therefore one cannot hold that Chekkutty Haji or Assan

Moyin did not obtain right over Sy.No.17 of the property just for the reason that in one of the documents Sy.No.17 is missing. It has also to be stated that after Ext.P3 purchase, portions of properties had been assigned by the predecessors of respondents and they are claiming balance property which belong to them.

5. The Land Tribunal on an appreciation of these documents coupled with the basic tax receipts which is for Rs.12 came to the conclusion that the respondents are in possession of the extent claimed by them because they had paid the basic tax for the property prior to the notified date of 1.1.70. On the contra, the Tribunal considered the documents produced by the revision petitioners herein and found that all the receipts are produced after 1974 and the landlord of the property shown therein is also incorrect. So, the Tribunal was not satisfied with the revenue receipts and that it did not relate to the property claimed by the revision petitioners in these cases.

6. The learned counsel for the revision petitioner strongly urged before me that the Tribunal has failed to note the authenticity of the revenue inspector's report. When there is overwhelming of documentary evidence, the mere report by an

authorised officer without the support of any documentary evidence or cultivation account or village records would not be sufficient to grant fixity of tenure to a person. There must be strong evidence adduced to show that documents right from the year 1912 are wrong. The learned counsel for the revision petitioners attempted to bring to my notice that there is no proper identification of the property. Neither the revision petitioners nor the respondents has any dispute with respect to the property they are claiming. So positively there cannot be any dispute regarding the identification of the property. The possible dispute can be only whether the property covered by Exts.P2 and P3 takes in all the properties. As stated by me earlier as early as in the year 1912, Sy.No.17 has been incorporated in the document and there is omission in the document of the year 1954. What is purchased by Chekkutty Haji in the year 1912 by virtue of Ext.P2 had been transferred in favour of Assan Moyin the predecessor-in-interest of the respondents. So, there cannot be any dispute that Chekkutty Haji's property is with respect to that of Assan Moyin and the respondents are only claiming right under him. Therefore, the said contention also cannot be accepted.

7. Regarding the appreciation of the oral evidence this is a revisional Court and two courts have concurrently decided and accepted it in favour of the respondents in the case and unless there is such gross irregularity or material defect this Court cannot substitute its view of said appreciation done by the Tribunal. It is also to be remembered that the lower Tribunal had the opportunity to see the witnesses and see their demenour before appreciating and accepting it. So that cannot be disbelieved unless there is sufficient materials for the same.

8. Then the learned counsel for the revision petitioners strongly contended that an opportunity must be given to his clients to further prove the case. In the light of the discussions above, I am convinced that there are sufficient documentary evidence available before the authorities to show that respondents' predecessors have obtained the property by purchase whereas there is no possible acceptable evidence on the side of the revision petitioners to show that fact. So at this point of time, that is, after a period of 22 years, I do not want the litigation to be protracted and I am convinced that there is no material irregularity or illegality in the decision rendered by the Tribunal as well as the

Appellate Authority. Therefore, all these revisions lack merit and they are dismissed.

M.N. KRISHNAN, JUDGE.

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M.N. KRISHNAN, J.

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C.R.P. Nos. 267, 491, 623 and 624 OF 1994

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O R D E R

9th April, 2007.